# United States Court of Appeals for the Second Circuit



# APPELLANT'S BRIEF & APPENDIX

IN THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

17-1036

APPEAL NUMBER 77-1036

VINCENT RIZZO
Appellant,

vs.

UNITED STATES OF AMERICA )
Appellee.

Bolls

BRIEF OF THE APPELLANT

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR SOUTHERN DISTRICT OF NEW YORK
D.C. NUMBER - 73 CR 672 - FREDERICK van PELT BRYAN,
U.S.D.J.

STATES COURT OF AP

AF 28 1977

DANIEL FUSARO, CLERY

SECOND CIRC

For the Appellee:
Robert B. Fiske, Jr.
United States Attorney
Southern District of New York
U.S. Courthouse - Foley Square
New York, N.Y. 10007

For the Appellant: Vincent Rizzo, Appellant In Propria Personia United States Penitentiary Box 1000 - Reg.#77336 Lewisburg, Pennsylvania 17837

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#### RULES AND AUTHORITIES INVOLVED

#### TITLE 18, UNITED STATES CODE SECTION 1962: PROHIBITED ACTIVITIES

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, Title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in or the activities of which effect interstate or foreign commerce. A purchase of securities on the open market for purposes of investment and without the intention of controlling or participation in the control of the issuer or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of the immediate family, and his or their accomplices in any pattern or racketeering activity of the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which effect,

interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which effect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprises' affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsections (a), (b), or (c) of this section.

#### TITLE 18, UNITED STATES CODE SECTION 371:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the the object of the conspiracy, each shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

#### TITLE 18, UNITED STATES CODE SECTION 1952:

(a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to -

(1) distribute the proceeds of any unlawful activity; or

(2) commit any crime of violence to further any unlawful activity; or (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,

and thereafter performs or attempts to proform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

#### RULE 11, FEDERAL RULES OF CRIMINAL PROCEDURE

"A defendant may plead not guilty, guilty, or, with the consent of the court, nolo contendere, The court may refuse to accept a plea of guilty, and shall not accept such plea or a plea of nolo contendere without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea. If a defendant refuses to plead or if a defendant's cooperation fails to appear, the court shall enter a plea of not fuilty. The court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea."

#### RULE 32(d) FEDERAL RULES OF CRIMINAL PROCEDURE:

"Withdrawal of a plea of not guilty, a motion to withdraw a plea of guilty or nolo contendere may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea."

#### PRELIMINARY STATEMENT

This appeal eminates from the denial of a Motion to Withdraw a Plea of Guilty, pursuant to Rule 32(d) Federal Rules of Criminal Procedure after a hearing before the Honorable Frederick van Pelt Bryan, United States District Judge, held on December 29,1976, on Indictment 73 Cr. 672, in the United States District Court for the Southern District of New York.

That the Motion was denied by the Honorable Frederick van Pelt Bryan, U.S.D.J. on December 29,1976, after a hearing on the motion, stating in the record of the hearing on page 34, line 8 thru 13: " The motion to withdraw the guilty plea entered before Judge McMahon in 73 Cr. 672 is in all respects denied. However, the motion to withdraw the plea of guilty entered before me in 72 Cr. 1332 is on a somewhat different posture. The indictment in that case charged a violation of 18 U.S.C. 1952."

The clerk of the court was directed by Judge Bryan to file and enter a notice of appeal on tehalf of the appellant on part of the application wherein the court denied his motion to withdraw his plea under Rule 32 (d), Federal Rules of Criminal Procedure, directed at Indictment 73 Cr. 672.

It is from this denial of the motion on December 29,1976, that this appeal is taken.

#### STATEMENT OF THE FACTS

The appellant was indicted along with fifteen (15) co-defendants, in Indictment number 73 Cr. 672 from the United States District Court for the Southern District of New York. Count One charging a conspiracy to commit certain offenses against the United States, to wit, to violate Title 18, United States Code, Sections 2314, 1708, 894, 1952 and 1962. The Overt Acts, which consisted of twenty six different acts appeared to be in violation of Title 18, United States Code, Sections 1962 and 371. However, the plea to Count One that appellant submitted was given to cover simply for a violation of Title 18, Section 371, which has a maximum sentence of five years, the general conspiracy count. (See plea minutes before Judge McMahon on October 9,1973, page 2)

The indictment was given to the appellant in the latter part of September, 1973, who, at that time was not represented by counsel, during the initial proceedings before the Honorable Judge McMahon. However, thereafter, appellant was given Henry Chapman, Esq. to represent him. The appellant conferred with counsel, concerning the case, plus two other cases pending against him, set for trial. Mr. Chapman expressed his feelings that the appellant needed a "wall street lawyer" because of the complex relationship involving, among other things, many hours of research needed for a proper defense. Subsequently, Mr. Chapman was relieved of his obligation as Court-Appointed Counsel for this Indictment, and all other Indictments pending against the appellant.

Mr. Gilbert Epstein, Esq., was then appointed in or about the first week of October, 1973 to represent the appellant on all three (3) pending indictments. Only one conference was had between the appellant and Mr. Epstein pertaining to all three (3) indictments pending. This particular conference lasted approximately one (1) hour. At the conclusion of this particular conference, Mr. Epstein did state to the appellant that he wasn't interested in listening to over 844 days of tape conversation that appellant claimed would prove his innocense in respect to his intent in involvement towards extortion, stocks, bonds, and any other type of activity, except the pursuit of his money. Mr. Epstein, then informed the appellant that it would be the "smart thing" to plead guilty and accordingly, the judge would probabaly only give a few years concurrent with the time appellant was already serving.

Further, Mr. William I. Aronwald, the Special United States Attorney to this appellant's indictments said that if the appellant was found guilty, he would get another indictment charging the appellant as a "Special Offender" that would then call for a life sentence.

On December 29,1976, the appellant motioned the court to be allowed to withdraw his plea of guilty, which was accepted by Judge McMahon on case number 73 Cr. 672, on October 9,1973. This was made possible because of the vacating of appellant's sentence on December 21,1976. A hearing was held before the Honorable Judge Bryan, on the matter of withdrawing the plea that was accepted by Judge McMahon. Although, appellant did move for this hearing before Judge McMahon, this request was denied by Judge Bryan on December 29,1976; the day of the hearing. The results of the hearing before Judge Bryan, was the denial of the withdrawal of the plea which was accepted by Judge McMahon, and the expanding of the charge in Count One to include Title 18, U.S.C Sec. 1962. Thus, from a original conviction on Count One for violating Sec. 371, because of the withdrawal, the appellant now stands convicted 8f Sec. 1962, which was not included in the original plea.

In addition to Count One in which the appellant submitted a guilty plea, he also pled guilty to Count Eight in Indictment 73 Cr. 672. Count Eight that the appellant plead guilty to, stated as follows:

"From on or about June 1,1971 to the date of filing of this indictment, in the Southern District of New York and elsewhere, WILLIAM BENJAMIN and VINCENT RIZZO, the defendants, unlawfully, wilfully and knowingly did travel and cause travel between the State of New York and Munich Germany, and did use the telephone and the mail in interstate and foreign commerce with the intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of the unlawful activities, to wit, extortion in violation of Title 18, United States Code, Section 891 ff and of the New York State Penal Law, Section 155.40, and thereafter the said defendants did perform and attempt to perform acts to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of said unlawful activities.

(Title 18, United States Code, Sections 1952 and 2)

Count One did charge:

"From on or about January 1,1970, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, TOMMASO AMATO, REMEGIO BEGNI, WILLIAM BENJAMIN, MARIO FOLIGNI, LOUIS GITTLEMAN, HYMAN T. GRANT, EVELYN JACOBS, JERRY MARC JACOBS, MANUEL RICHARD JACOBS, LEOPOLD LEDL, DOMINICK MANTELL, PATTY MARINO, MARINA NEUBERT, PETER RAIA, VINCENT RIZZO and ERNEST SHINWELL, the defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other and with Maurice Ajzen, Alfred Barg, Winfried Ense, Rudolph Guschall, Paul King and Phillip Wilson, each of whom is named as a co-conspirator herein but not as a defendant, and with other persons whose names are to the Grand Jury known and unknown, to commit certain offenses against the Uhited States, to wit, to violate Title 18, United States Code, Sections 2314, 1708, 894, 1952 and 1962.

#### ISSUE PRESENTED

DID THE DISTRICT COURT ERR WHEN IT DENIED APPELLANT'S MOTION TO VACATE SENTENCE PURSUANT TO RULE 32 (d), FEDERAL RULES OF CRIMINAL PROCEDURE?

#### ARGUMENT

The District Court did err when Judge van Pelt Bryan denied the Motion to Withdraw the Guilty Plea, pursuant to Rule 32(d), Federal Rules of Criminal Procedure, in that a reading of both the plea proceeding, before Judge McMahon - on October 9,1973, and the record of the Hearing which was conducted before Judge Bryan - on December 29,1976, will disclose that the Court failed to comply with Rule 11, Federal Rules of Criminal Procedure, Title 18.

A close reading of all cases concerning the policy established by the Supreme Court in McCarthy v. United States, (1969), 394 U.S. 459, will disclose the guidelines established by the Court makes it pointedly clear that it is the burden of the court to satisfy itself that the plea "is made voluntarily with understanding of the nature of the charges, and the consequence of the plea... The Court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea."

The record in itself is completely devoid of a determination by the Court - at the time of the entering of a guilty plea and also, at the time of the Hearing that the appellant voluntarily and knowingly made the plea of guilty and neither was it established that there was ever a factual basis for the plea.

The record of the plea, as shown on October 9,1973, at 4:00 P.M. shows the following:

Page 2, Line 4-8, 19-25, Page 3, 16-18

MR. BPSTEIN: I should indicate, further, that the plea being offered on count 1 is for violation of Title 18 Section 371, which has a maximum sentence of five years, the general conspiracy count.

THE COURT: You know that's what you are charged with. That's what you are charged with. I am not asking you whether you did it. Tell me what you are charged with.

THE DEFENDENT: I am charged with conspiracy, as far as I understand.

THE COURT: Conspiracy to do what?

THE DEFENDANT: Of knowingly knowing about stolen securities.

Page 3: THE COURT: Have you read this indictment against you?

THE DEFENDANT: I read it 20 times. I tried to see where I fit in.

As stated in McCarthy, supra:

"...because a guilty plea is an admission of all of the elements of the formal criminal charges, it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts."

394 U.S. at 466, 89 S.Ct. at 1171 22 L.Ed at 425

(Emphasis added)

It certainly is not adequate that appellant stated "I am charged with a conspiracy, as far as I understand." However, appellant next response, when further questioned by the Court, stated, "...I tried to see where I fit in." The Court's paraphrasing of the Counts in the indictment, and appellant's knowingly pleading guilty, is not what Rule 11, Federal Rules of Criminal Procedure is all about. For it is not the question as to whether or not the Court understood the charges, but that the appellant understands the law in relation to the facts, as can be decerned by the appellant's reply to the Court; "I have read it 20 times. I tried to see where I fit in."

In McMann v. Richardson, 397 U.S. 759 (1970), The defendant's were denied hearings on their habeas corpus petitions. The fact that their pleas of guilty were entered on the advice of competent counsel superceded the defendant's allegations of improperly procurred confessions. However, a plea of guilty differs in purpose and effect from a mere admission or an extra judicial confession; it is in itself a conviction. More is not required. The Court has nothing to do but give judgment and sentence. See Kercheval v. United States, 227 U.S. 220 (1927); Therefore, it becomes a conviction; it's validity must be as firmly grounded as any other type of conviction. In United States v. Bradin, 535 F.2d 1041(8th Cir. 1976), "The portion of Eule 11 here involved namely, that the Court may not enter judgment upon the plea unless it is satiled there is a factual basis therefore, presupposes a prior, albeit tentative, acceptance of the plea by the Court. It

speaks in terms of judgment. In United States v. Cody, 438 F.2d 287(8th Cir.), What was there held was simply that the mere fact of itself that the indictment was read to the defendant at the time his plea was taken "falls far short of demonstrating any factual basis for the defendant's plea." Citing McCarthy supra, that one method of determining that a factual basis exists for the plea is examining the presentence report. Such reports, of course, are not normally available to the Court prior to acceptance of a plea.

In the instant case, the records and files themselves are deplete of a finding that the plea was made with fully knowedgeable understanding of the nature of the charges.

Appellant respectfully brings to this Court's attention the basis for denying appellant motion, during the hearing before Judge van Pelt Bryan, in which Judge Bryan based part of his denial on Kloner v. United States, 535 F.2d 730, 2nd Cir. 1976, which said; " But here we are not faced with a complex crime such as a conspiracy in which interlocking and subtle elements may be capable of generating confusion, Seiller v. United States, supra, at 6538-39, or with a case involving multiple defendants where guilt of a particular defendant may have been mistakenly inferred from the acts of others, Nor is this an instance where the defendant acknowledged his guilt in an ambiguous fashion, Rizzo v. United States, 516 F.2d 789, 2nd Cir. 1975, br where the defendants' response constituted little more than a "limited or conditioned" admission of guilt, coupled with a "protestation of innocense," Hulsey v. United States, 369 F.2d 284,287(5th Cir. 1966), Instead, the indictment specified conduct constituting a relatively simple offense ..." Furthermore, the court in Kloner supra was made aware of the existence of a confession in which he had confirmed in detail his commission of the crime.

The appellant's case involved a twenty page indictment, coupled with fifteen co-defendants, involving a complex conspiracy, therefore, making it in complete opposites to the basis of Judge Bryan's denial.

(In the transcript of the Pleading Minutes of October 9,1973, begin; Line 12, Page 13)

THE COURT: Did you use the telephone and the mail in interstate and foreign commerce?

THE DEFENDANT: I did.

THE COURT: Did you do that with intention to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of the unlawful activity of extortion?

THE DEFENDANT: I used it to gain my money.

THE COURT: Did you use extortion? Did you threaten anybody with physical violence in the event they did not pay you?

THE DEFENDANT: NO.

THE COURT: You did not?

THE DEFENDANT: NO.

THE COURT: Did you threaten them in any way?

THE DEFENDANT: NO, your Honor

Here the appellant is plainly not pleading guilty to the charges in the Indictment, as described in Count Eight; "...to wit, extortion in violation of Title 18, United States Code, Section 891 ff...Title 18, United States Code, Section 1952 and 2." Pointedly, he is merely stating to the Court that he did not have any intention of using violence, and therefore that certainly is not an admission of his complicity in the unlawfully committed acts as charged in the Indictment.

(In the Transcript of the Hearing on December 29,1976, begin on Page 20, Line 4.)

MR. LEIGHTON: (the defense counsel) The Court just asked the defendant a blanket question, "Did you use violence or attempt to use violence?" And Mr. Rizzo in his own words answered, "No, I did not intend to use any violence or threats of violence."

I think that in and of itself negates the intent that is needed to make out the crime under Count Eight. And I believe for that very reason, the Court of Appeals in Mr. Rizzo's claim that the plea before Judge Duffy where Mr. Rizzo was claimed to have threatened

Mr. Kalomeris, but in taking the plea, Mr. Rizzo states that he was his dear friend and he would never use any threats of violence towards him.

The record was void of any actual showing that Mr. Rizzo made threats to Mr. Kalomeris or asked others to make threats of violence.

Where the record is void of such evidence, then, of course, the plea has to be vacated because the Court did not develop the necessary facts and have the defendant apply these facts to the law.

Is previously quoted from McCarthy, supra:

"Unless the defendant possesses an understanding of the law in relation to the facts..."

As far as the Court being able to interpret this as an understanding of the law in relation to the facts there is no correlation "on the record."

In Rizzo v. United States, 516 F.2d 789, Second Circuit 1975, it

said: "While we agree with the government's assertion that the reading of the indictment coupled with the defendant's admission that he committed the acts charged therein may, in some instances, satisfy the factual basis requirement, Irizarry v. United States, supra, at 968, n.9, this is not such a case. Not only did the district court fail to read the indictment, merely paraphrasing it, but Rizzo did not unequivocally admit that he committed the acts charged therein, stating only that "I understand my role in that." In view of Rizzo's immediately subsequent denials of the use of threats of force, this ambiguous statement is insufficient to meet the factual basis standard set forth in United States v. Steele, 413 F.2d 967, 969 (2nd Cir. 1969) and approved in Irizarry, 508 F.2d 968, n.9, which makes it clear that: "articularly where more than one defendant is charged, a sufficient statement of the acts and intent of the particular defendant, what the defendant did and intended, is necessary to an intelligent determination of whether there was a factual basis for the plea." See also McCarthy v. United States, supra at 470; United States v. Navedo, supra. The factual basis requirement is designed to "protect a defendant who is in the position of pleading voluntarily with an understanding of the nature of the charge but without realizing that his conduct does not actually fall within the charge." F.R.Cr.P. 11, Notes of Advisory Committee on Criminal Rules. See also McCarthy v. United States, supra at 467. In this case the conduct which Rizzo admitted was not sufficient to constitute the offense charged in the indictment to which he pleaded guilty; under these circumstances it was the obligation of the district judge to refuse to accept his guilty plea. See United States v. Navedo, supra, at 2313-14.

(In the transcript of the Pleading Minutes of October 9,1973, begin; Line 14, Page 8.)

THE COURT: Did that have to do in any way to further the scheme in the indictment?

THE DEFENDANT: Yes. That's where I met a Mr. Ense and Mr. Barg. I met the two Germans at the hotel the first time and went up to my room and they discussed treasury bills and counterfeit Coca-

stock, and if I could obtain any treasury bills for them. I told them, If you get me my money I will get you whatever you want," and I would find out for them if this Coca-Coca stock was counterfeit because I didn't know if it was counterfeit or what is was.

They asked me if it was counterfeit or good. There was a discussion about the money and I said, "I realize you don't know me. This is the first time you have ever seen me. The only way we can clear it up is to call up Benjamin in the Uniced States and he will verify that I am the man who you people owe the money to if, in fact, you have my money."

So they said they got the money and that was it. I said, "I'm the man who the money is owed to."

THE COURT: These treasury bills were dcolen treasury bills?

THE DEFENDANT: I was made to believe through a conversation they were talking about stolen treasury bills or bonds.

THE COURT: Hot bills and bonds"

THE DEFENDANT: Yes.

THE COURT: You were willing to go along with that deal to get your money back"

THE DEFENDANT: They wanted bills and I told them I would get them any bills they wanted provided they gave me my money first.

As far as the Court being able to interpret this as an understanding of the law in relation to the facts there is no correlation on the record.

In the <u>United States v. Young</u>, 424 F.2d 1276 (the defendant misunderstood the legal requisites necessary to make him liable as a participant in the offense.)

In the case of <u>United States v. McGee</u>, 355 U.S. 17, the Court states that; "The plea may be a voluntary act of a defendant, yet not made with understanding and thus be subject to vacation." See also <u>United States v. Antoine</u>, 434 F.2d 450 (2nd Cir. 1970).

A conviction after a plea of guilty normally rests on the defendant's own admission in open Court that he committed the acts for which he is charged. Erady v. United States, 397 U.S. at 748, 25 L.Ed. 2d at 756; McCarthy v. United States, 394 U.S. 459, 466, 22 L.Ed. 2d 418, 425, 89 S.Ct. 1166 (1969). That admission may not be compelled, and since the plea is also a waiver of trial and unless the applicable Law otherwise provides, a waiver of the right to

contest the admissibility of any evidence the state might have offered against the defendant - it must be an intelligent act "done with the awareness of the relevant circumstances." Brady v. United States, 397 U.S. at 748, 25 L.Ed. 2d at 756.

#### CONCLUSION

WHEREFORE, the DISTRICT COURT erred when denying appellant's Motion pursuant to Rule 32(d), Federal Rules of Criminal Procedure, to withdraw his plea of guilty, as the record will conclusively show, both in the record of the plea, and the record of the Hearing. It is respectfully submitted that this case be remanded so that appellant may be given an opporunity to replead.

Respectfully presented,

Vincent Rizzo, Appellant

STATE OF PENNSYLVANIA)
: SECOUNTY OF )

#### CERTIFICATE OF SERVICE

I, VINCENT RIZZO, the undersigned certify that I am the appellant in the foregoing Brief of Appellant, and that I have caused to be delivered the Original plus three (3) copies of the Brief, to the Clerk of the Court United States Court of Appeals, for the Second Circuit, New York, New York, and one (1) copy to the United States Attorney for the Southern District of New York, or his duly authorized representative.

THIS _	DAY OF	,1977
Notary	Public	
STATE	OF NEW YORK)	SS

SWORN TO AND SUBSCRIBE BEFORE ME

COUNTY OF NEW YORK)

I, VINCENT A. RIZZO, after being duly sworn, deposes and says; that I have delivered by hand, the above Brief of Appellant, to the Clerk of the Court, United States Court of Appeals, Second Circuit, New York, N.W., and delivered a copy of said Brief to the Office of the United States Attorney for the Southern District of New York, on this 15 day of 568., 1977.

Vincent A. Rizzo

SWORN TO AND SUBSCRIBE BEFORE ME

ON THIS 15 DAY OF 3.1. , 1977

Notary Public

FELIX GARCIA

MOTARY PUBLIC, STATE OF NEW YORK

No. 31 - 1871932

QUALIFIED IN NEW YORK GOUNTY

COMMISSION EXPIRES MARCH 80, 1921 7

United States of A VINCENT RIZEO came the attorney for the day of December government and the defendant appeared in person and by Gilbert Passoin, Esq.

It is Adjudged that the defendant upon his plea of guilty and the Court being satisfied there is a factual basis for the plea has been convicted of the offense of unlawfully, wilfully and knowingly did travel and cause travel between the State of New York and Munich Germany, and did use the telephone and the mail in interstate and foreign commerce with the intent to promote, manage, and the mail in interstate and foreign commerce with the intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of the unlawful activities, to wit, extortion, and a conspiracy so to do. (Title 18, United States Code, Sections 1952 and 2)

(Title 18, United States Code, Sections 1962 - 371)

as charged3 in Counts 1 and 8 and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It is Adjudged that the defendant is guilty as charged and convicted.

It is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Five (5) Years on each of Counts 1 and 8 to run concurrently with each other.

THE STATE

In tal States District Indeed

Execution of prison sentence is suspended.

Counts 2, 3, 4, 5 & 7 are dismissed on motion of defendant's counsel with consent of the Government.

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## Hutten Staten Minteret Court

United States of America

VINCENT RIZZO

No. 73 CR. 672



Miss

On this lith day of December . 19 73 constitutions of Section 19 73 constitutions of Section

It is Adjudged that the defendant upon his plea of guilty and the court being satisfied there is a factual basis for the plea, has been convicted of the offense of unlawfully, wilfully, and knowingly did travel and cause travel between the State of New York and Munich Germany, and did use the telephone and the mail in Interstate and foreign connerce with the intent to promote, manage, on of the unlawful activities to mit, extention, management, establishment and carrying (title 18, U.S. Code, Sections 1952 and 2)

(Title 18, U.S. Code, Sections 1962 and 371)

as charged; in counts 1 and 8 and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court.

It Is Addudged that the defendant is guity as charged and convicted.

It is Advicable that the defendant is hereby commutated to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIVE (5) YEARS on each of counts 1 and 8 to run concurrently with each other.

Execution of prison sentence is suggested as counts 1 and 6. Defendant is placed on reprobation for a period of ORE (1) DAY, subject to the standing probation Order of this court.

It Is ADJUNCED that?

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SOUTHERN DISTRICT OF NEW YORK

S. D. OF "

UNITED STATES OF AMERICA

VINCENT RIZZO

No. 73 Cr. 672

day of January On this 8th . 1974 . XIXIX PROPERTY OF THE PROPERTY WAX the classical and a second sec rper Al Prosequentum. This court persons to rule 16 F.R.C.P. corrects a clerical em in its Judgment dated December 6, 1973 to the extent indicated below.

IT Is ADJUDGED that the defendant upon his plea of guilty, and the court being satisfied there is a factual basis for the plea

has been convicted of the offense of unlawfully, wilfully, and knowingly did travel and cause tr laboration the State of New York and Munich Germany, and did use the telephone and the mail in Inte state and foreign commerce with the intent to promote, manage, establish, carry on and facilitate promotion, management, establishment and carrying on of the unlawful activities to wit, extortion and a conspiracy so to do. (Title 18, U.S. Code, Sections 1952 and 2)

(Title 18, U.S. Code, Sections 1962 and 371)

as charged' in counts 1 and 8

and the court having asked the defendant whether he has anything to say why judgment should not

be pronounced, and no sufficient cause to the contrary being shown or appearing to the court, It is ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED' that the defendant is sentenced to FIVE (5) YEARS on each of counts 1 and 8 to run concurrently with each other. Execution of prison sentence is suspended c counts 1 and 8. Defendant is placed on Probation for a period of ONE (1) DAY, subject to the standing Probation Order of this Court.

> IN OROFI . . 1 . 1-74

It Is FURTHER ORDERED that during the period of probation the defendant shall conduct himself as a law-abiding, industrious citizen and observe such conditions of probation as the Court may prescribe. Otherwise the defendant may be brought before the court for a violation of the court's orders.

It Is FURTHER OLDERED that the clerk deliver three certified copies of this judgment and order to the probation officer of this court, one of which similarly neithered to the defendant by the probation

Regressed 7 Berghardt

17' 14' UNITED STATES OF AMERICA . 73 Cr. VIMILE RIZZO On this day of Jumary . 19 74 . X THE RESIDENCE CONTRACTOR OF THE PARTY OF THE the distribute the control of the control of the court of Coupus Ad Propogramitas. This court pursuant to rule 35 2. A.P. Concests a clearest error in its Julgment dance accourage 6, 1973 to the extent indicated below. IT Is ADJUDGED that the defendant upon his plea of guilty, and the court being satisfied there is a factual basis for the plea has been convicted of the offense of unlawfully, wilfully, and knowingly did travel and cause tras hotesen the State of How York and Munich Germany, and did use the telephone and the mail in Interse and foreign commerce with the intent to promote, manage, establish, sarry on and facilitate the metion, management, establishment and corrying on of the unlawful activities to wit, extertion a conspiracy so to do. (Title 18, U.S. Code, Sections 1952 and 2)

(Title 18, U.S. Gode, Sections 1962 and 371)

as charged in counts 1 and ? and the court having asked the defendant whether he has anything to say why judgment should not

be pronounced, and no sufficient cause to the contrary being shown or appearing to the court,

Tr B ADJUDGED that the defendant is guilty as charged and convicted.

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It is Adjudged' that the defendent is sentenced to FIVE (5) YEARS on each of counts 1 and 8 to run concurrently with each other. Execution of preson centence is suspended counts 1 and 8. Defundant is placed on Probation for a period of CHE (1) DAY, subject to the standing Probation Order of this Court.

It Is FURTHER ORDERED that during the period of probation the defendant shall conduct himself as a law-abiding, industrious citizen and observe such conditions of probation as the Court may prescribe. Otherwise the defendant may be brought before the court for a violation of the court's orders.

It Is FURTHER ORDERFO that the clerk deliver three certified copies of this subment and order to the probation officer of this court, one of which small be defined to the defendant by the probation

FREDERICK van Pelt BRYAN

United State & District Judge. PATRIOND P. SURGRARDA

A fraction Certified the JAL. 1971.

## UNITED STATES DISTRICT COURT

73 CRM. 670

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13) MARINA NEUBERT  1, 2, 3, 4  15) VINCENT RIZZO  1, 2, 3, 4, 5, 7, 8  Title and Sections 1d:371 conspiracy to engage in racketeering organization and to use foreign and I.C. for transport of stolen securities(  18:2314 & 2 transport in foreign and I.C. stolen securities, money, etc. (2,3,4,5,6)  18:094,691(7) & 2 extortion in attempt to collect extension of cred  18:1952 travel in foreign and I.C. to promote unlawful activities to wit bridge (8)  extortion  total counts: EIGHT.  7-11-73 PETER RAIA- Deft, and Atty, present. Bail fixed in the sum of \$50,000, secured by \$7,500, cash or surety. Bail to be posted by 4 P.M. today. Deft. ordered photographed and fingerprinted. —— Stewart, J.  7-18-73 M.R. Jacobs-Filed affidavit for writ H/C ad Pros. Writ iss. & ret.7/2		PATTY MARINO				
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- MIS	PROCESDE
7-23-73	Gittleman-Court enters plea of not guilty.
	J.M. Jacobs- present and enters plea of not guilty. Tail continued at \$25,000, surety bond in Calif.) Deft. ordered photograpus. and fingerprinted.
*	Mantelli-Court enters plat of not cuilty.
•	Raia-(atty. present) Plends not guilty. Bail.continued(\$50,000. P.R and \$7,500. surety bond. All defts. 10 days for motions.  CASE ASSIGNED TO JUDGE MACMAHON FOR ALL PURPOSES.
-24-73 /	Ward, J.  VINCENT RIZZO - Filed Affdet, for W/H/C Ad Pros. Writ issued Ret. 7-31-73.
7-30-73	BVELYN JACOBS- (No Atty. Present) Co urt directs entry of Plea of Not Guilty.  Deft, R.O.R. Bail limits cont'l, U.S. To be fingerprinted and photographed  Motions 10 days after return of MacMAHON.J. WARD.J.
8-7-73	Filed the following received from U.S. Magistrate: docket # 73-995.
12.00 M	Notice of Appearance by Peter Griffin, 161 William St., N.Y.C. 962-5442
	PETER RAIR - Filed notice of motice to amend, temporarily the bail limits.
8-14-73	amt. of \$25,000.
B-13-73*	WINCENT RIZZO - Produced on writ. Courtmenters PLFA OF NOT GUILTY. Remanded. Writ adj'd. until 8-14-73.
	WILLIAM BENJAMIN - Theodore Kreiger assigned . Deft PLEADS NOT GUILTY. Remanded. Writ satisfied.
	whanuel R. JACOBS- Court enters PLEA of NOT GUILTY. Deft. Remanded. Writ adj'd, until 8-14-73. All Defts, ordered photographed and fingerprimted. WYATT,J.
8-14-73	IOUIS CITTLEMAN - (atty present) Pleads NOT GUILTY, Bail cont'd. deft to be fingerprinted and photographed.
	DOMINICK MANTELL - (Atty.Present) Pleads NOTIGUILTY, Bail cont'd. Deft. to be fingerprinted and photographed. Trial set for 11-5-73. MacMAHON, J.
8-14-73	EVELYN JACOBS- MANUEL R. JACOBS- Court appoints Joseph J.Zedusser, Legal Aid. MagMAHON, J.
8-15-73	DOMINIC MANTELL - Received the following from Sou.Dist.of Fla.  Magistrate's Proceedings and Appearance bend,
8-2-73*	PETER RAIA- Filed notice of appearance by Peter Criffin, 161 William St., NYC. 962-5442.
The state of the s	JERRY MARC JACOBS - Filed notice of appearance by Stuart Edward Levison, 860 Grand Concourse, Brons, N.Y., N.Y., 10451 585-6900.
8-20-73	000 Grang Concovinge, Profess Maria Service

	MacMAHON,	J. 1.	Page 4 ·		· 73 Crim. 672
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EVELYN JAC	03S- Filed Wa	arrant for	rrest, Warrant	executed by F.I	1.1. 7-11-73.
JERRY MARC	JACOBS- Pil	ed Warrant	for arrest, Warr	ant executed by	P.B. L. 7-11-73.
11 212 11	File	d adoption	of co-defts. mo	tion.	
10 mg	· Piled Filed	motion for Motion for	production and	ramination of Go	vt. vitaess.
11 SE 11	Piled Piled	Morion for	Discovery and on to Disclose	the Existence	of Electronic Surveill
· · · · · · · · · · · · · · · · · · ·	Piled	Motion for Motion for	Severence and Change of Vent	supporting memo	
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PETER PAJA	Filed MEMO F	ND on motio	m to amend bai	Transfer Contract	following argument.
DOMINICK M		ed affdyt 1	n support of m	otion for severa	
LOUIS CIT				2. • · · · · · · · · · · · · · · · · · ·	
Filed B/P	and Discover	y and Inspe	etion.	and a second section of the second se	the first of the same of the s
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DOMINICK	MANTELL- File Grant	ed MEMO END	on motion for red. MacMAHON,J	admission Pro Ha	nec Vice. Motion
HYMAN T.	GRANT- (Arty	Present) Do	Fr. PLRADS GUT	LTY to ct. I on	y. No Sentence
ZÓUIS CIT	TLEMAN - 711	ed adoption	of co-deft. mo	cions.	
Piled tre	enscript of r	ecord of pr	oceedings date	d. Aug. 21-73.	. *
1	The within mo	tion for se	verance and tr	ansfer of this a n all respects.	See memo end, o n
	JERRY MARC  TOMINICK MA  First  OMINICK MA  OMINICK MA  OMINICK MA  OMINICK MA  OMINICK MA  FIRST  FILED  F	JERRY MARC JACOBS - FILED  OMINICK MANTELL - Filed  First St., Suite 8  OMINICK MANTELL - Filed  """ Filed  ""	EVELYN JACOBS- Filed Warrant for a  JERRY MARC JACOBS- Filed Warrant    OMINICK MANTELL- Filed Notice of First St., Suite 800, Miami,    OMINICK MANTELL- Filed statement of  "Filed Motion of description of the statement of the	PROCEEDINGS  EVELYN JACOBS- Filed Warrant for arrest, Warrant  JERRY MARC JACOBS- Filed Warrant for arrest, Warrant  OMINICK MANTELL- Filed Motice of appearance by First St., Suite 800, Miami, Florida 33131  OMINICK MANTELL- Filed statement of conference by  "Filed Motion of co-defts, mm  "Filed Motion for production and  "Filed Motion for production and  "Filed Motion for Discovery and  "Filed Motion for Discovery and  "Filed Motion for Discovery and  "Filed Motion for Severence and  "Filed Motion for Change of Vent  "Filed Motion for Change of Vent  "Filed Motion for Gismiss.  "Filed Motion to disclose Grand  "Filed Motion for Change of Vent  "Filed Motion for Severance and fir  "Filed Motion for Granted of Proceedings date  Filed Motion for Filed Motion for Severance and fir  "Filed Motion for Filed Motion for Severance and fir  "Filed Motion for Filed Motion for Severance and fir  "Filed Motion for Filed Motion for Severance and fir  "Filed Motion for Filed Motion for Severance and fir  "Filed Motion for Filed Motion for Severance and fir  "Filed Motion for Filed Motion for Severance and fir  "Filed Motion for Filed Motion for Severance and fir  "Filed Motio	PROCEEDINGS  EVELYN JACOBS- Filed Warrant for arrest, Warrant executed by P.I.  JERRY MARC JACOBS- Filed Warrant for arrest, Warrant executed by P.I.  ONINICK MANTELL- Filed Notice of appearance by William P. Carm.  First St., Suite 800, Miami, Florida 33131 (305) 371-06.  SMINICK MANTELL- Filed statement of conference between prosecut.  "Filed Motion of co-defts. motion.  "Filed Motion of deft. tointerview Gove. Witness.  "Filed Motion for psychiatric examination of Government of the P.P.  "Filed Motion for B/P.  "Filed Motion for B/P.  "Filed Motion for B/P.  "Filed Motion for Discovery and Inspection.  "Filed Motion to disclose bubbtance of promises.  "Filed Motion for Change of Venus.  "Filed Motion for Change of Venus.  "Filed Motion to disclose Stand Jury Procedures.  "Filed Motion to disclose Grand Jury Procedures.  "Filed Moti

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DATE	PROCEEDINGS
0-2-73	DOMINICE MANTELL - Filed MENO ZND, on motionto compel disclosure: Motion granted on consent. Information to be provided by Oct. 25,73. So Ordered.
9-2-73	MacHARON, J.  DONINICX MANTELL - Filed MEMO END on motion to disclose.  Hotion granted on consent. So Ordered. MacMARON, J.
3-2-73	DOMINICE MANUELL - Filed MONO END. on motionsfor inspection. The within motion is dinied. *** So Ordered. MacMAHON, J.
<b>9-3-73</b>	DOMINICX HANTELL - Filed HEMD END, on motion for transcription of minutes.
9-2-73	DOMINICX MANTELL - Filed MEMO END, on motion to interview Govt. Witnesses.  Motion by deft. Mentall to interview witnesses Creekmore and Wilson is
	before the court, at a mutually convenient time within ten (10) days, for an in camera examination by the court to determine whether they are willing to submit to the interviews sought. Motion in all other respects are denied.
	DOMINICX MANTELL - Filed MEMO END, on motion for psychiatric examination of Govt.  witness. The within motion for psychiatric examination of the witness Creekmore and a bearing thereon is denied in all respects.
10-2-73	DOMINICK MANTELL - Filed MEMO END, on motion for disclosure of Grand Jury procedures. The within motion borders on the frivolous and is denied in all respects. So Ordered, MacMARON, J.
10-2928	DOMINICK MANTELL - Filed MEMO END, on motion to file additional motion.  Hotion granted to the extent that the deft, Mantell may make additional motions out of time by oral application to the court, as directed at the pretrial conference held on Aug. 14-73. ***, So Ordered, MacMAHON, J.
	DOMINICK MANTELL - Filed MEMD END on motion adopting co-deft, motions.  The within motion was granted at the pretrial conference of Aug. 14-73 and is  therefore repetitious and unnessary. The court adheres to its rulings at  the pretiral conference, So Ordered, MacMARON.J.
10-2-73	DOMINICK MANTELL- Filed MEMO END, on motion for B/P. The within motion is denied as repetitious. ***. So Ordered, MacNAHOH, J. (n/m on 11 MEMO. End)
10-2-73	DOMINICK MANTELL - Filed MEMO END, on motion for change of venue. ***  On balance of all the relevant factors, we hold that a transfer would not be in the interest of justice nor would it serve the convenience of the parties and witnesses. Accordingly, the within ;motion is denied. So Ordered. MacMAROR, J.
10-2-73	DOMINICK MANTELL - Filed MEMO END, on motion for severance. The within motion . is denied. *** MacMAHON, J.
10-3-73	PETER BAIA - Filed adoption of co-deft, motion.
10-10-73	VINCENT RIZZO - Filed deft. acknowledgement of constitutional rights.

Cont'd on page 6

PROCEEDINGS  10-9.71 VINCENT RIPPO (ARTY PERSON) Sentence referred to Judge BRIPANT, on 11-70-73. MacCHANDS, J.  211-70-73. MacCHANDS, J.  211-71 PILES GOVE, Sentence referred to Judge BRIPANT, on 11-70-73. AnixI. 2. IACORS - 711-13 Affdyr, for W/M/C As Pros. Ret. 10-17-73.  2-12-73 Filed Gove, seems of law.  2-12-73 PITER RAIA - Filed Memo FMG on motion for adoption. Notion disposed of in accordance with memo decision of this date, MacCHANDS, J.  2-12-73 COUIS GITTLEWAN- Filed Hamo End. on motion for adoption. Notion disposed of accordance with memo decision of this date. MacCHANDS, J.  2-12-73 ENTER GITTLEWAN- Filed Hamo End. on motion to dismiss indictment; Motion disposed of accordance with memo decision of this date. MacCHANDS, J.  2-12-73 ENTER GITTLEWAN- Filed Memo End. on motion to dismiss indictment; Motion disposed of accordance with memo decision of this date. MacCHANDS, J.  2-12-73 ENTER GITTLEWAN- Filed Memo End. on motion to dismiss indictment; Motion disposed of this date. MacCHANDS, J.  2-12-73 ENTER GITTLEWAN- Filed Motice of appearance by Staphen D. Millar, 360 R. R.  2-12-73 ENTER MACCHANDS DECT. RAIA also adopted the MacCHANDS, J.  2-12-73 PITES GITTLEWAN- Filed Motion of this date, MacCHANDS, J.  2-12-73 PITES GITTLEWAN- Filed Motice of appearance by Manual in addition his own motions. Deft. RAIA also adopte all motions asserted by Manual in addition his own motions. Deft. RAIA also adopte all motions made by Gittleman. The first of the four prounds asserted by Manual in addition his own motions. Deft. RAIA also adopte all motions made by Gittleman and Raia is that it is ambiguous and the data also the first to due process by denying them a fair trial.  2-12-73 Manual Richard MacCHANDS, William Argument the first to due process by denying them a fair trial.  2-12-73 Piled Gove, memo of law.  2-12-73 Piled Gove, memo of law.  2-12-73 Piled Gove, memo of law.  2-12-73 Piled Gove a memo of	oria.	672 Page 6 MacHA:ON_J.
GULLITY to Cite. 1 & 6 only. Sentance referred to Judge BRICHY. on 11-20-73. MacMANON, J.  AMIZI. 1 JACORS - 711.1 Affayr. for WHIG AM Pros. Ref. 10-17-71.  PIZE-73 Filed Govt. memo of law.  1-12-73 Filed Govt. memo of law.  1-12-73 FIRE RAIA - Filed MONO FIRE on motion for adoption. Motion disposed of in accordance with memo decision of this date. MacMANON, J.  12-73 LOUIS GITTLYMN- Filed Memo End. on motion for adoption. Motion disposed of accordance with memo decision of this date. MacMANON, J.  12-73 LOUIS GITTLYMN- Filed Memo End. on motion to dismine indictment: Motion disposed of accordance with memo dicision of this date. MacMANON, J.  12-73 LOUIS GITTLYMN- Filed Memo End. on motion to dismine indictment: Motion disposed of accordance with memo dicision of this date. MacMANON, J.  12-73 LOUIS GITTLYMN- Filed Memo End. on motion to dismine indictment: Motion disposed by Strategy and End. 19-12-73 LOUIS GITTLYMN - Filed Memo End. on motion of this date. MacMANON, J.  12-73 PIZE- SINCE GITTLYMN - Filed Memo End. on motion to dismine to dismine to dismine to dismine to dismine accordance with memo dicision of this date. MacMANON, J.  12-73 PIZE- SINCE GITTLYMN - Filed Motion and the strain and adopted by Gittleman. The first of the four grounds asserted by Mantell and adopted by Gittleman. The first of the four grounds asserted by Mantell and adopted by Gittleman. The first of the four grounds asserted by Mantell and adopted by Gittleman and Raia is that 18 U.S.C. Sact. 1962. a status they are charged with the violation. It was a state of the first of the motions of Mantell, Gittleman and Raia to dismine the indicement are denied. So Ordered. MacMANON, J. (See memo is file (n/m to three defts.)  13-73 Filed Aground in the first of Africa and Capper, Str Transcript of filed MCRO END: on affort, of Milliam Aronwald.  18-73 Filed Agrounds a filed on affort, of Milliam Aronwald.  18-73 Filed MCRO END: on affort, of Milliam Aronwald.  18-73 Filed MCRO END: on affort, of Milliam Aronwald.  18-73 Filed MCRO END: o	DATE	
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OFIS GITTLEMAN - Filed None End. on motion to dismiss indictment; Motion di of a secordance with mano dicinion of this data. MacMand, J.  12-73 LOUIS GITTLEMAN - Filed notice of appearance by Staphen D. Miller. 360 R. R. B. B. Suite 204. Reverly Hills. Calif., 90210. (213)278-5100.  12-73 Price NEW: MANTELL AND GITTLEMAN move to dismiss the indictment on from motions. Deft. RAIA also adopts all motions asserted by Mantell in addition his swm motions. Deft. RAIA also adopts all motions made by Gittleman. The first of the four grounds asserted by Mantell and adopted by Gittleman and Raia is that 18 U.S.C. Sect. 1962. a statute they are charged with it violating, is unconstitutional. They claim that it is embiguous and the start of the first price to the process by denying them a fair trial. disagree.  *** who Motion to dismiss count one on the ground that it is duplications desied.  *** Mantell. Gittleman and Raia also move to dismiss on the ground that the indictment is unconstitutionally vegur and ambiguous. We cannot agree this contention.  *** Accordingly, all of the motions of Mantell, Gittleman and Raia to disagree this contention.  *** Accordingly, all of the motions of Mantell, Gittleman and Raia to disagree this contention.  *** Tiled Govt, memo of law.  12-73 Filed Govt, memo of law.  12-73 Filed ACONS - Piled W/H/G Ad Pros- writ satisfied 8-21-73, MacMandon Piled Govt's, memo of law.  13-73 Filed MDNO END: on affect, of Milliam Aronweld.  Not considered on question of desqualification, Ruling made soly on base of facts satastd in legter of Attys. Tefford and Cagney, Sty Transcript of of facts satastd in legter of Attys. Tefford and Cagney, Sty Transcript of of facts satastd in legter of Attys. Tefford and Cagney, Sty Transcript of of facts stated in legter of Attys. Tefford and Cagney.	talis talk to a finite	put to be supplied to the supplied by the supp
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The first of the four grounds asserted by Mentell and adopted by Gittle and Rais is that 18 U.S.C. Sect. 1962, a statute they are charged with violating, is unconstitutional. They claim that it is ambiguous and the it violates their right to due process by denying them a fair trial.  disagree.  the Notion to dismiss count one on the ground that it is duplicatious denied.  denied.  Mantell: Gittleman and Rais also move to dismiss on the ground that the indictment is unconstitutionally vagur and ambiguous. We cannot agree this contention.  Accordingly, all of the motions of Mantell, Gittleman and Rais to disagree this contention.  Accordingly, all of the motions of Mantell, Gittleman and Rais to disagree indictment are denied. So Ordered, MacMARON, J. (See memo in file (n/m to three defts.)  Piled Govt, memo of law.  12-73 Filed Govt, memo of law.  12-73 Filed affdyt, of William L.Aronweld, Special Atty, U.S. Dept. of Judtice.  Not considered on queution of desqualification, Ruling made soly on base of facts stated in legter of Attys. Tefford and Cagney, Sty Transcript of facts stated in legter of Attys. Tefford and Cagney, Sty Transcript of facts stated in legter of Attys. Tefford and Cagney, Sty Transcript of		Pried NEWS: Deits, MANTELL AND GITTLEMAN move to dismiss the indictment on various, grounds, Gittleman adopts all motions asserted by Mantell in addition to his own motions, Deft, RAIA also adopts all motions made by Gittleman.
disagree.  disagree.  dealed.  Mantell. Gittleman and Rais also move to dismiss on the ground that it is duplicatious dealed.  Mantell. Gittleman and Rais also move to dismiss on the ground that the indictment is unconstitutionally vagur and ambiguous. We cannot agree this contention.  Accordingly, all of the motions of Mantell, Gittleman and Rais to disagree the indictment are denied. So Ordered. MacMARON, J. (See memo in file (n/m to three defts.)  17-73 Filed transcript of record of proceedings dated Aug. 13-73.  17-73 Filed Govt, memo of law.  18-73 Filed affdyt, of William I. Aronweld, Special Atty. ,U.S. Dept. of Judtice.  18-73 Filed MEMO END: on affdyt, of William Aronweld.  Not considered on question of desqualification, Ruling made soly on base of facts stated in latter of Attys. Tefford and Cagney, Stf Transcript of facts stated in latter of Attys. Tefford and Cagney, Stf Transcript of facts stated in latter of Attys. Tefford and Cagney, Stf Transcript of facts stated in latter of Attys. Tefford and Cagney, Stf Transcript of facts stated in latter of Attys. Tefford and Cagney, Stf Transcript of facts stated in latter of Attys. Tefford and Cagney, Stf Transcript of States attated in latter of Attys. Tefford and Cagney, Stf Transcript of States attated in latter of Attys. Tefford and Cagney.	** New York	The first of the four grounds asserted by Hantell and adopted by Gittleman and Rais is that 18 U.S.C. Sect. 1962, a statute they are charged with violating, is unconstitutional. They claim that it is subjected with
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8-73 Filed Coyt's, memo of law,  8-73 Filed MEMO END: on affdyt, of William Aronwald,  Not considered on question of desqualification, Ruling made soly on base of facts stated in letter of Attys. Tefford and Cagney, Ste Transcript of		
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Cont'd on page 7	-	Cont'd on page 7

	VINCENT RIZZO - Filed CIA Tom 7 20, Appointment and Youther of Henry K. Chinasa 335 B'Nay. NYC. 10013. MacFAHON, J.  Piled oue sealed envelope and placed in yoult Room 502. So Ordered. MacMARCH, J.
	Filed one sealed envelope and placed in vault Room 502 So Ordered, MacMARON J.
-73	THE PARTY OF THE P
	WILLIAM BENJAMIN (atty present) Deft. withdraws plea of not guilty and PLEADS
	GUILT' to ct. 1 only, produced on writ, adj'd, same die, sentence adj'd sene die.
	MANUEL R. JACOBS (Atty. Present) Deft. withdraws plea of not guilty and JLZADS GUILTY to ct.1 only. Produced on writ and aid'd, sene die, sentence adid, sene die.
	JERRY M. JACOBS (Atty present) Defr. withdraws plea of not guilty and PLEADS  GUILTY to ct. one (1) only, Sentence adjd. sene die. P.S.I. Ordered. Deft.  R.O.R.
	Trial adid. to Dec.3-73. MacMARON, J.
-2-73	PETER RAIA - Filed Supplemental B/P.
the second secon	TOMMASO AMATO - Filed supplemental R/P.
-30-73*/	PRIER RAIA - Filed motion for disclosure.
13-73 4	PRIER RAIA - Filed MEMO END on motion filed 10-30-73 for disclosure.  The enumerated requests in the attached motion are decided as follows:1)  Granted to the extent that when a witness testifies the government must furnish the deft. with the witness's conviction record only: 2) Granted on consent:  3)(a) Denied: 3)(b) Denied: 4) Denied: 5) Granted to the extent that the requested information must be made available when the witness testifies.  The motion is denied in all other respects. So Ordered. MacMAHON, J.
-28-73	PRTER RAIA (Deft(Atty.Present) withdraws plea of not guilty and PLEADS GUILTY to ct.1 only. P.S.I. Ordered . Deft. cont'd. on present bail of \$5,000.  ALL DEFTS. to be sentenced 1-31-74 at 10 a.m. MacMAHON, J.
2-5-73	Filed transcript of record of proceedings dated 10-9-73.
2-6-73	VINCENT RIZZO-Filed Judgment & Commitment (atty present)-Deft. is committed to the
7	custody of the Atty Gen'l for imprisonment for a period of FIVE (5) YEARS on each of Counts 1 & 8 to run concurrently with each other. Execution of prison sentence is suspended. Counts 2,3,4,5, 7 are dismissed on motion of deft's counsel with consent of the GovernmentBryan, J.
	Issued Commitment.
2-5-77	Pyled transcript of record pf proceedings dated Sept.13-73.
12-14-73	VINCENT RIZZO - Deft. (Atty Present) Filed Judgment and commitment.  It Is Adjudged that the deft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of FIVE (5) YEARS on each of cts. 1 & 8 to run concurrently with each
	other.  Execution of prison sentence is suspended on cts. 1 & 8. Deft. is placed on Probation for a period of ONE (1) DAY, subject to the standing probation Order of this court. ERYAN, J. (copies issued)

DATE	PROCESDINGS
2-28-73	DOMINICK WHITELL - Filed consent to transfer for plea and sentence Under Rule
<del>_</del> ,	20, the aut. Disc. of Ela. M. Mar., 21.
-28-73	LOUIS GITTLEMAN Filed consent to transfer for plea and sentence under Rule
	20 to the Dist. of Calif. Central Dist. Los Angeles.
-28-73	Mailed the two above copies to the Dist. as indicated.
-8-74	VINCENT RIZZO - Filed 2nd Corrected Judgment, and issued copies)
	It Is Adjudged that the deft. is sentenced to. FIVE (5) YEARS on each of cts.
	1 & 8 to run concurrently with each other. Execution of prison sentence is suspended on cts. 1 & 8. Deft. is placed on probation for a period of ONE
a shippedaria	(1) DAY, subject to the standing probation order of this Court. BRYAN, J.
1-14-74	DOMINICK MANTELL - Filed receipt of record by Sou. Dist. of Fla.
1-14-74	LOUIS GITTLEMAN - Filed receipt of record by Central Dist. of Calif.
	The state of the s
V. 1	VINCENT RIZZO - Filed copy of J & C . Deft. delivered to Fed. Detention Hdgrts.
• • • •	Dec.6-73.
2-31-73	WINCENT PIZZO - Piled true copy of W/H/C. writ satisfied 12-6-73, BRYAN.J.
e en e	EVELYN JACOBS - Entered and filed nolle prosequi. MacMAHON, J.
6-74	EVELYN JACOBS - Entered and Titled notice prosequi. Nacradox, 3.
-30-74	MANUEL RICHARD JACOBS - Deft. (Atty.Present) Filed Judgment/and issued copies.
- 30-14	It Is Adjudged that the deft, is hereby committed to the custody of the Atty.
	Gen. or his authorized representative for imprisonment for a period of TWO
	(2) YEARS AND FINED \$10,000, on count 1. Deft. is to stand committed until
A. 188	the fine is paid or he is otherwise discharged according to law. The prison
	sentence is to run CONSECUTIVELY to the sentences imposed on deft. by the
	sentence is to run CONSECUTIVELY to the sentences imposed on deft. by the U.S.D.C. for the Central Dist. of Calif. at Los Angeles on 12-22-67 and
1.16.4	sentence is to run CONSECUTIVELY to the sentences imposed on deft. by the U.S.D.C. for the Central Dist. of Calif. at Los Angeles on 12-22-67 and 8-7-69
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	sentence is to run CONSECUTIVELY to the sentences imposed on deft. by the  "U.S.D.C. for the Central Dist. of Calif. at Los Angeles on 12-22-67 and  8-7-69.  "Crs. 5 & 6 are dismissed on motion of deft's counsel with the consent of the Govt. MacMAHON, J.  PETER RAIA - Deft. (Atty.present) Filed Judgment # 74 "
1-30-74/	sentence is to run CONSECUTIVELY to the sentences imposed on deft. by the  "U.S.D.C. for the Central Dist. of Calif. at Los Angeles on 12-22-67 and  8-7-69.  "Crs. 5 & 6 are dismissed on motion of deft's counsel with the consent of the Govt. MacMAHON, J.  PETER RAIA - Deft. (Atty.presen:) Filed Judgment # 74 - 2 & issued copies.  It Is Adjudged that the deft. is hereby committed to the custody of the Atty.  Gen or his authorized representative for imprisonment for a period of FOUR  (4) YEARS and FINED \$10,000. on ct. 1. Deft. is to stand committed until the fine is paid or he is otherwise discharged according to law.  Cts. 2,3, & 4 are dismissed on motion of deft's counsel with the consent of
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1-30-74/	sentence is to run CONSECUTIVELY to the sentences imposed on deft. by the  "U.S.D.C. for the Central Dist. of Calif. at Los Angeles on 12-22-67 and  8-7-69.  "Crs. 5 & 6 are dismissed on motion of deft's counsel with the consent of the Govt. MacMAHON.J.  PETER RAIA - Deft. (Atty.presen:) Filed Judgment # 7# "
1-30-74/	sentence is to run CONSECUTIVELY to the sentences imposed on deft., by the U.S.D.C. for the Central Dist. of Calif. at Los Angeles on 17-22-67 and 8-7-69.  **Cts. 5 & 6 are dismissed on motion of deft's counsel with the consent of the Govt. MacMAHON.J.  **PETER RAIA - Deft. (Atty.present) Filed Judgment * 74
L-30-74/	sentence is to run CONSECUTIVELY to the sentences imposed on deft. by the U.S.D.C. for the Central Dist. of Calif. at Los Angeles on 12-22-67 and 8-7-69.  **Cts. 5 & 6 are dismissed on motion of deft's counsel with the consent of the Govt. MacMAHON, J.  **PETER RAIA - Deft. (Atty.present) Filed Judgment **74-72- & issued copies.  It Is Adjudged that the deft. is hereby committed to the custody of the Atty.  Gen or his authorized representative for imprisonment for a period of FOUR  (4) YEARS and FINED \$10,000. on ct. 1. Deft. is to stand committed until the fine is paid or he is otherwise discharged according to law.  Cts. 2,3, & 4 are dismissed on motion of deft's counsel with the consent of the Govt. MacMAHON, J.  JERRY MARC JACOBS - Deft. (Atty.Present) Filed judgment and issued copies.  It Is Adjudged that the deft. is sentenced to TWO (2) YEARS, on ct. 1.  Execution of the prison sentence is suspended. Deft. is placed on probation
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1-38-74	sentence is to run CONSECUTIVELY to the sentences imposed on deft. by the "U.S.D.C. for the Central Dist. of Calif. at Los Angeles on 17-22-67 and 8-7-69.  "Cts. 5 & 6 are dismissed on motion of deft's counsel with the consent of the Govt. MacMAHON.J.  "PETER RAIA - Deft. (Atty.present) Filed Judgment # 74 "
1-38-74	Sentence is to run CONSECUTIVELY to the sentences imposed on deft. by the  "I.S.D.C. for the Central Dist. of Calif. at Los Angeles on 12-22-67 and  8-7-69.  "Cts. 5 & 6 are dismissed on motion of deft's counsel with the consent of the Govt. MacMAHON, J.  PETER RAIA - Deft. (Atty.present) Filed Judgment # 74 " > 6 issued copies.  It Is Adjudged that the deft. is hereby committed to the custody of the Atty.  Gen or his authorized representative for imprisonment for a period of FOUR  (4) YEARS and FINED \$10,000. on ct. l. Deft. is to stand committed until the fine is paid or he is otherwise discharged according to law.  Cts. 2,3, & 4 are dismissed on motion of deft's counsel with the consent of the Govt. MacMAHON, J.  JERRY MARC JACOBS - Deft. (Atty.Present) Filed judgment and issued copies.  It Is Adjudged that the deft. is sentenced to TWO (2) YEARS, on ct. l.  Execution of the prison sentence is suspended. Deft. is placed on probation for a period of TWO (2) YEARS, subject to the standing probation order of this Court. MacMAHON, J.  HYMAN T. GRANT - Deft. fails to appear for sentencing. B/W Ordered. Bail revoked, MacMAHON, J.

MARINA NOWBERT  SECONT SHINACL  12-21-75 Filed Notice of Motion to withdraw his ries of guilty (Lags)  12-16-75 Filed Notice of Motion to withdraw his ries of guilty (Lags)  12-21-75 Filed Notice of Motion to withdraw his ries of guilty (Lags)  12-21-75 Filed Notice of Motion to withdraw his ries of guilty (Lags)  12-21-75 Filed Notice to vacate sentence granted Footion to withdraw guilty plea add'  to 12-23-76 Fryan, J.  12-21-75 Filed Tearing held add'd to 12 20-77 Fryan, I.  12-23-75 Filed Tearing held add'd to 12 20-77 Fryan, I.  12-23-75 Filed Notice of the Atty Gen. for input, for a peroid of FIVE (5) FERE  each of counts one and eight to The concurrently with eachother. Execut  prison sentence is suspended on counts one and eight, Deft is placed on  bation for a period of our (1) day on count one, and one (1) day on count  eight, subject to the standing probation order of this court. Counts to  seven of the indictment have been dismissed on deft's motion with the c  of the Govt! Motion to withthraw guilty pleas pursuant to Fed. R. Crim  in all respects denied 30 CRDERED FREDERICK VAN PELT EXYAN. all  issued.  2-30-75 Filed NOTICE OF APPEAL to the USCA from the Judgment entered in this is  12-29-75. m/n  A TRUE COPY  RAYBOND R. BURGHAMITS D.  A TRUE COPY  RAYBOND R. BURGHAMITS D.  A TRUE COPY	DATE		PROCEEDINGS	
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-22-74	Filed W/H/C/ ad Pros. Writ satisfied 1-30-74. Macikidit
	Market Market and the second and the
-4-74	RAIA - Filed copy of J & C. deft. delivered to Pederal Detention Hdgrcs,1-30-74.
-5-74	WILLIAM BENJAMIN - Deft, (Atty Fresent) Filed Judgment and Laued copies.
	It Is Adjudged that the deft, is hereby committed to the custody of the Atty.
	Gen, or his authorized representative for imprisonment for a period of TWO
	(2) YEARS and FINED \$10,000. on et. 1. Deft. 1s to stand committed until
	fige is paid or he is otherwise discharged according to law. The prison
	sentance is to run concurrently with the sentence imposed by this Court.
t she t	Judge Lee Gagliardi on June 4, 1973, Case # 73 Cr. 195.
	Cts. 2,3,4,7 & 8 are dismissed on motion by deft's, counsel with the consent
*:	of the Govt, MacMAHON, J.
-10-74	BENJAMIN - Filed CJA Form # 20. Appointment and youcher for counsel. MacMAHON, J.
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1-19-74	(/) defendants ) is
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* - \$	AND
* = \$ <sub>1</sub> ,	RIZZO - Filed copy of Judgment with marshals return, copy delivered to F.D.H.
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5-1-74 5-1-74 5-8-74 5-23-74 7-10-74	RIZZO - Filed copy of Judgment with marshals return, copy delivered to F.D.H.  BENJAMIN - Filed copy of J/C with marshals return, deft. delivered to Somerset  Co.Jail, Sommerville, N.J. 3-5-74.  BENJAMIN - Filed copy of I/C with marshals return, deft, delivered to Somerset  Co. Jail, Sommerville, N.J. 3-5-74.  MANUEL  JACOBS - Filed notice of motion for reduction of sentence.  MANUEL  JACOBS - Filed MEMO END on motion for reduction. Application denied, So Ordered.  MacMAHON, J. (n/m)  Filed transcript of record of proceedings, dated   100   100   100   100    CRANT, Hyman Tologial statistically because  (No. 100   100   100   100   100    CRANT, Hyman Tologial statistically because  (No. 100   100   100   100    (No.
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5-1-74 5-1-74 -8-74	RIZZO - Filed copy of Judgment with marshals return, copy delivered to F.D.H.  BENIAMIN - Filed copy of J/C with marshals return, deft. delivered to Somerset  Co.Jail, Sommerville, N.J. 3-5-74.  BENIAMIN - Filed copy of J/C with marshals return, deft. delivered to Somerset  Co. Jail, Sommerville, N.J. 3-5-74.  MANUEL  JACOBS - Filed notice of motion for reduction of sentence.  MANUEL  JACOBS - Filed MEMO END on motion for reduction. Application denied. So Ordered.  MacMAHON, J. (n/m)  Filed transcript of record of proceedings, dated  CRANT, Hyman Tologed statistically because  () with esc ) fugitive.  In all other respects this case  In all other respects this case  Jacobs - Filed pending.
5-1-74 5-1-74 -8-74 -8-74 -29-74 7-10-74	RIZZO - Filed copy of Judgment with marshals return, copy delivered to F.D.H.  BERMANIN - Filed copy of J/C with marshals return, deft. delivered to Somerset  Co.Jail, Sommerville, N.J. 3-5-74.  BENIAMIN - Filed copy of I/C with marshals return, deft. delivered to Somerset  Co. Jail, Sommerville, B.J. 3-5-74.  MANUEL  JACOBS - Filed notice of motion for reduction of sentence.  MANUEL  JACOBS - Filed NEMO END on motion for reduction. Application denied. So Ordered.  MacMAHON, J. (n/m)  Filed transcript of record of proceedings, dated  () with 30 ) fugitive.  In all other respects this 238  Is apill pending.
5-1-74 5-1-74 -8-74 -8-74 -29-74 -29-74	RIZZO - Filed copy of Judgment with marshals return, copy delivered to F.D.H.  BENJAMIN - Filed copy of J/C with marshals return, deft. delivered to Somerset  Co.Jail, Sommerville, N.J. 3-5-74.  BENIAMIN - Filed copy of J/C with marshals return, deft. delivered to Somerset  Co. Jail, Sommerville, B.J. 3-5-74.  MANUEL  JACOBS - Filed notice of motion for reduction of sentence.  MANUEL  JACOBS - Filed MEMO END on motion for reduction. Application denied. So Ordered.  MacMAHON, J. (n/m)  Filed transcript of record of proceedings, dated  CRANT, Hyman Tologed statistically because  1
5-1-74 5-1-74 -8-74 -8-74 -29-74 7-10-74 7-21-71	RIZZO - Filed copy of Judgment with marshals return, copy delivered to F.D.H.  BRMANIN - Filed copy of J/C with marshals return, deft. delivered to Somerset  Co.Jail, Sommerville, N.J. 3-5-74.  BENIAMIN - Filed copy of J/C with marshals return, deft. delivered to Somerset  Co.Jail, Sommerville, N.J. 3-5-74.  MANUEL  JACOBS - Filed notice of motion for reduction of sentence.  MANUEL  JACOBS - Filed memo end on motion for reduction. Application denied. So Ordered.  MacMAHON, J. (n/m)  Filed trenscript of record of proceedings, dated  (a) All other respects this case  In all other respects this case  Is still pending.  Eled mars From record of proceedings, dated  JAN 32, 1974
5-1-74 5-1-74 -8-74 -8-74 -29-74 7-10-74	RIZZO - Filed copy of Judgment with marshals return, copy delivered to F.D.H.  BERMANIN - Filed copy of J/C with marshals return, deft. delivered to Somerset  Co.Jail, Sommerville, N.J. 3-5-74.  BENIAMIN - Filed copy of I/C with marshals return, deft. delivered to Somerset  Co. Jail, Sommerville, B.J. 3-5-74.  MANUEL  JACOBS - Filed notice of motion for reduction of sentence.  MANUEL  JACOBS - Filed NEMO END on motion for reduction. Application denied. So Ordered.  MacMAHON, J. (n/m)  Filed transcript of record of proceedings, dated  () with 30 ) fugitive.  In all other respects this 238  Is apill pending.